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HC grants buyer 'TCS refund' from seller placing reliance on ITAT's findings on TCS wrongfully collected

Facts

The case of the Appellant Company is that the Central Coalfields Limited (i.e. Respondent 1 & 2) forcefully realized INR 7.86 crores from the appellant in the guise of Tax Collected as Source for the period FY 2012-13 to the 1st Quarter of FY 2017-18. The ld. counsel for the appellant contended that the benefit of Section 206C(1A) ought to have been granted to the appellant once Form 27C has been submitted by the appellant and there exists no material to conclude that the declaration forming part of such Form is false. He also contended that once Form 27C has been submitted by the buyer, the concept of a 'mini-trial' does not exist at the time of availment of benefit u/s 206 C(1A). He also submitted that the present case of the appellant and is governed by Paras 19(a) and 19(c) of the order passed by this Court in W.P. (C) No. 46/2018. Any solution, wherein the Appellant is made to wait for the issuance of TCS Certificate or subsequent adjustment of its future tax liabilities by the Income Tax Department until technical glitches are resolved would legitimize the illegal collection of tax and therefore, such an approach cannot be sustained. The Ld. counsel also contended that Respondents No. 1 and 2 cannot take the defence that it will not refund the money unless the Income Tax Department refunds the TCS. Interest has to necessarily follow the refund of TCS illegally collected from the Appellant as a matter of course.

Under the returns filed for the period of dispute, the Appellant had neither accounted for, nor claimed such credit of TCS, as on the date of filing of the returns TCS certificates had not been issued in favour of the Appellant. Such being the case, the Appellant apprehended that the IT Department would not allow the TCS credit to flow in favour of the Appellant. The Appellant could not revise its returns u/s 139(5) for the period under dispute so as to account for the credit of TCS as the due date to file revised returns had lapsed. The Appellant prayed for directions from this Court that the Assessing Officer be directed to open assessments of the Appellant for the period under dispute to the limited extent of allowing the Appellant to account for and claim the benefit of TCS in its returns or directing the Assessing Officer to rectify earlier orders so as to allow the credit of TCS along with interest as per law.

Ruling

HC directed that the entire sums of money collected as TCS from the Appellant along with interest thereon, i.e., INR 6.26 crores (towards TCS) plus INR 1.61 crores (towards interest), amounting in total to INR 7.87 crores, be refunded by Respondents 3 to 5 (Revenue) to Respondents No. 1 and 2 (CCL) who should thereafter forthwith refund the same to the Appellant in a time-bound manner.

The Refund Respondents No. 3 to 5 (Revenue) to Respondents No. 1 and 2 (CCL) referred to above is directed to be affected within six weeks from the date of this order and in turn the Respondents No. 1 and 2 (CCL) shall refund the same to the Appellant within two weeks thereafter. HC also stated that if any of the Respondents delay in meeting the aforementioned timelines then statutory interest as per the Act on Refund will be granted in favour of the Appellant and payable by the defaulting Respondent.

Source: HC, Jharkhand in Adhunik Power & Natural Resources Ltd. vs JCIT/ACIT (TDS), Ranchi vide W.P. (T) No. 2023 of 2021 on October 05, 2023

HC rules for Hyatt Regency; law prevails over book entries for resolving capital v. revenue dispute

Facts

The appellant is in the business of running a five-star hotel named Hyatt. In and about 1990, when nearly six years had passed since the hotel went into commercial production, the appellant embarked on repairing, renovating and refurbishing its hotel. For the accomplishment of the tasks at hand, the appellant had appointed GEL as a consultant via an agreement. In FY 1991-92, the appellant spent in and about INR 8.48 crores towards renovation, refurbishment and repairs of its hotel, out of which INR 6 crores was capitalized, while the remaining amount was claimed as revenue expenditure under the head "repair and maintenance". The appellant paid GEL INR 23.19 lacs during this period. The AO via assessment order, among other things, disallowed the expenditures claimed under the heads "repair and maintenance" and "payment to GEL". The appellant, being aggrieved, carried the matter to CIT(A) who deleted, substantially, the disallowance made on account of "repair and maintenance". The deletion ordered by the CIT(A) was to the extent of INR 2.44 crores. However, the CIT(A) disallowed expenditure amounting to INR 3.09 lacs incurred on pressurization of lift shafts, which, according to him, had resulted in a benefit of enduring nature. Further, the CIT(A) also sustained the disallowance ordered by the AO concerning INR 23.19 lacs paid by the appellant to GEL. This resulted in the appellant and the Revenue preferring appeals with the Tribunal.

The Revenue's appeal before the Tribunal was, thus, confined to the disallowance of the addition amounting to INR 2.44 crores ordered by the CIT(A), with regard to "repair and maintenance". On the other hand, the appellant enlarged the scope of its appeal by not only agitating the disallowance of payments made to GEL and the expenditure incurred on pressurization of lift shafts but also claimed, for the first time, amounts expended on renovation, which were capitalized in its books of accounts. The amounts capitalized previously that were claimed for the first time before the Tribunal as revenue expenditure was, as noticed above, INR 6 crores. The appellant had moved an application for being permitted to plead additional grounds concerning the expenditure which, according to it, had been erroneously capitalized in its books of accounts, although, it was in the nature of revenue expenditure. The Tribunal disposed of the cross-appeals filed Qua the remaining, only the appellant had preferred appeal from the order passed by the CIT(A).

The Tribunal, via the impugned order, disallowed the relief granted by the CIT(A) pertaining to the deletion of disallowance ordered by the AO amounting to INR 2.44 crores concerning expenditure made towards "repair and maintenance". Besides this, the Tribunal also rejected the plea advanced on behalf of the appellant that INR 6 crores, capitalized in its account's books, should be treated as revenue expenditure. ITAT also stated that the expenditure claimed on renovation and refurbishment, allowed by the CIT(A), was not independent of expenses claimed towards repairs, replacement and renewals but was an integral part of the overall object of creating a "New Hyatt".

Ruling

HC held that the Tribunal overlooked the principle that when an expenditure is incurred to make the profit-earning structure work more efficiently, leaving the structure of the source of profit or income intact, it can only be treated as revenue expenditure, although its impact may last for an extended period. Concededly, the appellant had not added a single room to the hotel property. The renovation and refurbishment of the rooms, including washrooms and other facilities in the hotel, only improved, if at all, the efficiency of the source of profit or income and hence, in our opinion, the expenses incurred for that purpose could not be categorized as capital expenditure. Therefore, for the aforesaid reasons, we are inclined to sustain the view taken by the CIT(A) that INR 2.44 crores spent on renovation, refurbishment and repairs had to be treated as revenue expenditure. The contrary view taken by the Tribunal cannot be sustained and, hence, is overruled.

HC also stated that according to us, this view, on the same logic, cannot be sustained for the reason that if GEL was called upon to plan and supervise the execution of the work involving renovation, refurbishment and repairs, the fees paid in that behalf should also be treated as revenue expenditure. The nature of the expenses incurred, as noticed by the CIT(A), is not suggestive of the fact that they were incurred on the capital account.

While disallowing the deduction, the CIT(A) has applied the parity principle. In his order, the CIT(A) notes that expenses incurred by the appellant towards payment of monies to other consultants involved in interior design, lighting and illumination had been capitalized. In our opinion, the fact that the appellant had capitalized the expenditure, which, in law, it could claim as revenue expenditure, would not be determinative of what should be the correct conclusion in the matter. It is well-established that the manner in which the expense/income is reflected in the books of accounts of the appellant or in some cases omitted, is not determinative of its true nature, although it may provide a clue. The safest and the surest way to arrive at the true nature of the expense/income in issue is by having regard to the provisions enunciated either in the statute and/or the principles enunciated by the courts.

In our opinion, the appellant was correct in contending before the Tribunal that the expenses which had been capitalized and were sought to be treated as revenue expenditure would require examination by the AO. Further, the appellant will be entitled to claim these deductions, as, in our opinion, they are in the nature of revenue expenditure, INR 2.44 crores incurred on renovation, refurbishment and repairs; INR 3.08 lacs incurred on pressurization of lift shafts and INR 23.19 lacs incurred on payment of fees to GEL. Insofar as the amount of INR 6 crores is concerned, which was initially capitalized and was claimed before the Tribunal for the first time as revenue expenditure and forms part of the additional grounds raised by the appellant in its appeal preferred before the Tribunal, it would stand remanded to the AO for examination of the character and nature of the expenses incurred, in the light of the principles adverted to hereinabove.

Source: HC, Delhi in Asian Hotels Ltd. vs CIT vide ITA 1398/2006 on October 09, 2023

HC upholds Section 35(2AB) deduction as delay in Form-3CL not attributable to Appellant

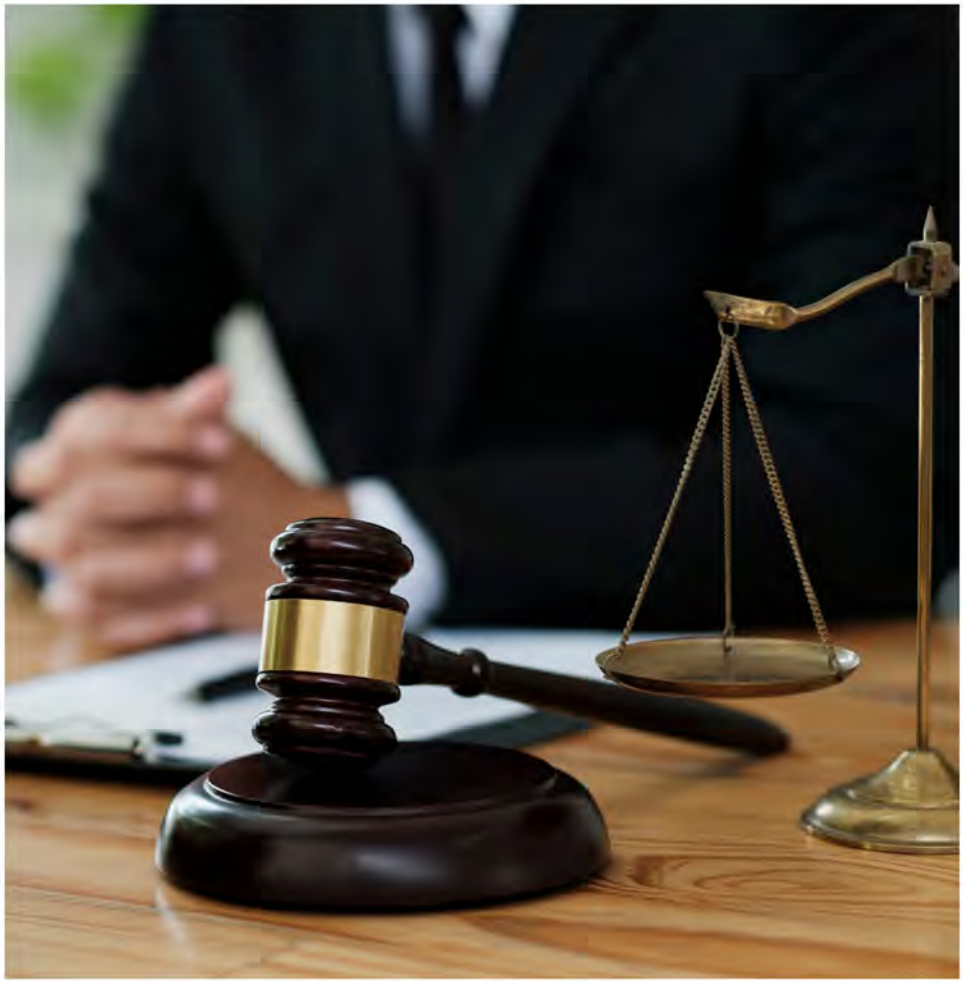
Facts

The appellant filed its original return of income for AY 2016-17 declaring total income at INR 35.24 crores. Subsequently revised return of income was filed, declaring total income at INR 37.70 crores. The case was selected for scrutiny and an order u/s 143(3) r/w 144C(3) was passed determining total income at INR 39.96 crores. Thereafter, it was noticed by the PCIT that the appellant has claimed deduction u/s 35(2AB) of INR 20.12 crores for R&D facility. However, the appellant had not submitted necessary documentary evidence i.e. Form 3CL issued by the prescribed authority which is mandatory to be filed on or before the due date of filing of return of income. Therefore, the PCIT invoked his revisionary jurisdiction u/s 263 that the deduction claimed u/s 35(2AB) was not allowable and passed an order u/s 263 holding that the assessment order u/s 143(3) r/w 144C(3) passed by the AO is erroneous in so far as it is prejudicial to the interest of Revenue.

The PCIT further quashed and set aside the order of assessment under 143(3) r/w 144C(3) and directed the AO to pass fresh assessment order after taking into consideration the issues as considered in the order passed u/s 263. It was also directed that the AO shall grant reasonable and sufficient opportunity of being heard to the appellant. Aggrieved by the order u/s 263, the appellant preferred appeal before the ITAT. The ITAT quashed the order of PCIT u/s 263 holding that the order of the AO is not erroneous as also not prejudicial to the interest of Revenue.

Against the order of ITAT, present appeal is filed by the Revenue proposing the following question of law.

The ld. Senior Standing Counsel submitted that the PCIT rightly invoked his jurisdiction u/s 263, since the report in Form 3CLA by the prescribed authority was not submitted on or before the assessment proceedings. The PCIT in his order has observed that the appellant has submitted only a certificate of recognition for in house R&D unit and therefore not entitled for deduction claimed u/s 35(2AB).



Ruling

HC held that in view of above it is not in dispute that the appellant at the time of original assessment has filed a copy of recognition of in-house R&D facility. The appellant also filed the approval of in-house R&D facility in Form 3CM during the course of assessment with regard to the computation of deduction u/s 35(2AB). The appellant also filed certificate of the auditor certifying the expenditure during the course of assessment proceedings. With regard to Form 3CL, the same was issued by the prescribed authority which was after passing of the assessment order u/s 143(3), and therefore, the appellant could not produce the same on or before the assessment order. Further, Form 3CL was duly filed by the appellant during the course of assessment. Therefore, since the appellant has filed Form 3CL certifying his Research and Development facility approved by the prescribed authority in proper format, merely because the authority failed to send the intimation during the course of assessment proceedings could not be the reason for denying the claim deduction. HC further stated that the ld. ITAT in our opinion is correct in holding that the order of the AO is not erroneous and prejudicial to the interest of revenue.

Source: HC, Gujarat in PCIT vs M/s Schaeffler India Ltd. vide R/Tax Appeal 679 of 2023 on October 10, 2023

Section 56(2)(viib) inapplicable to loan conversion; Revenue cannot pick & choose valuation method

Facts

The appellant is an Indian company engaged in the business of generation and distribution of electricity and owns a Hydro Electric Project in Chanju, Himachal Pradesh; that for the relevant year, the appellant filed return of income u/s 139(1) declaring a loss of INR 67.15 crores. The assessment in the case of the appellant was completed u/s 143(3) assessing total income of the appellant at INR 135.37 crores after making addition of INR 202.50 crores u/s 56(2)(viib), alleging that the appellant had issued equity shares at a premium which is in excess of the fair market value of shares. On appeal, the CIT(A) deleted the addition made by the AO. Aggrieved, the department is in appeal.

The ld. DR, challenging the impugned order, has contended that the ld. CIT(A) erred in deleting the addition of Rs. 202.50 crores under the Head "Income from Other Sources" u/s 56(2)(viib) on account of excess amount per share paid as premium; that the ld. CIT(A) eared in holding that there is no case of application of Section 56(2)(viib) to the facts of appellant's case where pre-existing unsecured loans of partners/shareholders were converted into equity shares at premium and the facts of the assessment order do not indicate any case of tax abuse involved in such share conversion; that the ld. CIT(A) erred in deleting the addition as the DCF valuation used by the appellant was done with fictitious figures having no correlation with actual affairs of the appellant company.

The ld. DR contended that the appellant, a private limited company has, during the year allotted 2,25,00,000 shares of face value INR 10 each at a premium of INR 90 each; that the market value of the shares as per the NAV method and Rule 11UA of the Income Tax Rules is far less than the value at which the shares have been al lotted; that the appellant has submitted that the value of the shares has been determined at INR 106 per share by the DCF method and has submitted CA certificate in support of the same; that the CA certificate mentions that all the values of variables in the DCF method have been taken as per figures provided by the management of appellant company; that the appellant failed to produce any valid justification in respect of projection of financial statements, which is baseless, unsubstantiated and far removed from the actual business and financial realities of the appellant company.

The ld. DR has contended that in the above facts, the AO has rightly held that the DCF valuation used by the appellant is bogus and sham and has no connection with the real figures. The valuation was done with fictitious figures having no correlation with actual affairs of the appellant. The valuation was done using imaginary figures to arrive at a premeditated value of INR 106 (exceeding INR 100) per share. The ld. DR has, submitted that therefore, the order of the ld. CIT(A) having been wrongly passed, the same be set aside and cancel led and that passed by the AO be restored, upholding the addition made by the AO.

On the other hand, ld. Counsel for the appellant has contended that during the course of assessment proceedings, the AO issued SCN

incorporating draft order wherein, merely on comparison of the financial projections used for DCF valuation with the actual financial results for certain period, the AO treated the valuation of shares as per DCF method as fictitious, bogus and sham, thereby rejecting the valuation report and determining the FMV on the basis of Net Asset Value method. The allegations made in the aforesaid draft order were rebutted by the appellant wherein the appellant duly explained the basis of projections and reasons for variation. The AO however, without judiciously considering the submissions of the appellant and without providing adequate opportunity of being heard, proceeded to pass the assessment order making a huge addition of INR 202.50 crore u/s 56(2)(viib). The CFF(A), after considering the detailed submission of the appellant duly explaining the reasons for variation in the project and actual reasons and the legal position, deleted the addition made by the AO observing that the provisions of section 56(2)(viib) were not applicable inasmuch as no consideration was received during the year. The CIT(A) further held that the DCF method applied by the appellant could not have been rejected for mere variation in the actual figures vis-a-vis the projected figure without any evidence being brought on record to establish any tax abuse involved. The aforesaid section provides for taxation of consideration received during the year by a company in excess of fair market value of shares issued at premium. The fair market value is to be determined in accordance with valuation method prescribed in Rule 11UA(2) of the Rules.

Ruling

- The Appellant followed the DCF Method for valuing the shares, whereas the ld. PCIT utilized the NAV Method to do so.
- This action of the ld. PCIT is in direct contravention of the provisions of Explanation (a)(i) to section 56(2) (vii) of the IT Act read with rule 11UA(2)(b) of the IT Rules.
- The AO could not have changed the method of valuation opted by the Appellant, in view of the statutory mandate of rule 11UA(2) of the Rules.
- Therefore, there was no error in the AO's Order, calling for revision u/s 263.

To similar effect, under mutatis-mutandis, similar is our order dated 24-02-23 passed in the case of Apna Punjab Resorts Limited Vs PCIT, in ITA 111/CHD/2021, for assessment year 2016-17. Accordingly, the grievance sought to be raised by the Department by way of its ground of appeal is found to be shorn of merit and it is rejected as such. In the result, the appeal is dismissed.

Source: ITAT, Chandigarh in ACIT vs I.A. Hydro Energy Pvt. Ltd. vide ITA No. 548/Chd/2022 on October 11, 2023

Additions deleted on the ground that Revenue failed to examine the onus discharged under section 68 by the Appellant

Facts

The appellant has raised the following grounds of appeal:

- Ld. CIT (A) erred in law and on facts has confirmed the additions of INR 14.28 lacs made on account of the stamp duty and registration fees treating the same as capital expenditure.
- Ld. CIT (A) erred in law and on facts has confirmed the additions of INR 19.63 crores on account of the alleged non-genuine share application and share premium credited to books of account during the year under consideration made by the Assessing Officer by invoking the provisions of section 68 of the IIT Act without appreciating the fact that the appellant Ts a widely held company and the money was received through proper banking channels.

The ground no. 1 raised by the appellant was not pressed and was therefore dismissed. The brief facts are that the appellant in the present case, a public limited company, is engaged in the business/ activity of motion pictures production, trading of goods and software. The appellant in the year under consideration has issued share capital to 44 different parties being individuals, HUF and LLP and private companies. The total value of share capital stands at INR 1.40 crores and premium of INR 18.23 crores aggregating to total share capital of INR 19.63 crores only. The appellant to justify the source of share capital has furnished certain details viz. names, addresses, and number of shares allotted to each subscriber. However, the AO was not satisfied with the details furnished by the appellant. Firstly, the consent letters and copies of cheques were provided only for 13 share subscribers out of 44 share allottees. Likewise, the ITR acknowledgements were provided only of six share allottees out of 13 share subscribers who furnished the consent letters. Thus, as per the AO the identity, genuineness, and creditworthiness of the remaining 31 parties were not furnished at all. The AO further observed that even the appellant has not discharged the onus-imposed u/s 68 with respect to 13 parties. It is because the appellant cannot be said having discharged it onus merely on filing consent letters at the fag end of the assessment proceedings. Thus, the AO in the absence of necessary supporting documents treated the entire share capital as unexplained cash credit u/s 68 and added to the total income of the appellant. Aggrieved appellant carried the matter before the ld. CIT(A).

However, the AO in the remand report submitted that the appellant has already been provided sufficient opportunities for necessary compliance during the assessment proceedings. As such, there is no violation of Rule 46A. Therefore, it was submitted by the AO that the additional documents filed by the appellant should not have been admitted. The appellant in its rejoinder submitted that there was no report submitted by the AO on merit of the case. Accordingly, the appellant prayed to the ld. CIT(A) to exercise his power and verify the genuineness of the share transactions in the same way the Assessing Officer does. However, the ld. CIT(A) rejected the application for the additional evidence filed by the appellant on the reasoning that the appellant was provided sufficient opportunities during the assessment

proceedings. The ld. CIT(A) on merit of the case held that the appellant has not discharged the onus-imposed u/s 68. Hence, the ld. CIT(A) confirmed the order by sustaining the addition made by the Assessing Officer. Being aggrieved by the order of the ld. CIT(A), the appellant is in appeal before ITAT.

Ruling

From the above, there remains no doubt that the appellant has discharged the onus imposed under section 68 for the shares subscribers by providing their name, address, no of share allotted as well as PAN and bank detail of the top 13 investor during the assessment proceeding. The appellant further discharged the onus cast under section 68 by furnishing the PAN and bank detail of all the share subscribers. The AO failed to avail itself of the opportunity to make necessary examination/ verification based on the primary document furnished by the appellant and bring the contrary material on record.

It is equally important to note that the proviso to section 68 requiring to explain the source of source was brought in the statute was effective from 1st April 2013 i.e. effective from 2013-14 onward only whereas the dispute before us relates AY 2011-12. Thus, it can be safely concluded that proviso is not applicable for the year under consideration. the appellant in the present case is a widely held company whereas the proviso brought under the statute is applicable to private limited companies. Accordingly, it can be held that such a proviso is not applicable to the appellant. In view of the above and after considering the facts in totality, we set aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the appellant is allowed.

Source: ITAT, Ahmedabad in Divine Multimedia (India) Ltd. vs DCIT vide ITA No. 805/Ahd/2016 on October 16, 2023

Shree Sai Baba Sansthan 'charitable & religious', anonymous donations not taxable

Facts

The appellant is a public trust constituted under the name and style of 'Shirdi Sansthan of Shri Sai Baba', registered under the Bombay Public Trust Act. Vide Bombay HC's order, the administration of the Trust was vested in Board of Management, constituted by the Charity Commissioner, Government of Maharashtra. Thereafter, Shri Sai Baba Sansthan Trust (Shirdi) Act of 2004 was promulgated which reconstituted the public Trust of 'Shirdi Sansthan of Shri Sai Baba' as 'Shri Sai Baba Sansthan Trust (Shirdi)' which is the appellant before us. The appellant is also registered u/s 12A and 80G and is also approved in terms of Section 10(23C)(v) by the ld. CCIT, Mumbai. For the AY 2015-16, the appellant had filed its return of income along with copy of I&E A/c, BS and Audit Report in Form 10B declaring Nil total income. The case of the appellant was selected for regular scrutiny wherein the AO noted that, the appellant Trust had received aggregate donations of INR 228.25 crores, out of which INR 159.12 crores was by way of hundi collections (anonymous donations). The AO accordingly required the appellant to explain as to why provisions of Section 115BBC should not be applied. According to the AO, the appellant was a charitable trust and since the anonymous donations exceeded 5% of the total donations, the same was taxable u/s 115BBC(1). The AO was of the view that, the status of the appellant as a trust existing solely for charitable purposes was evident from the certificate obtained u/s 80G. It was the AO's case that, the registration under Section 80G was given to only those trusts, which were established in India solely for charitable purposes and which did not have any religious purposes. For this, the AO referred to the definition of the term 'charitable purpose' which provides that 'charitable purpose' does not include any purpose, the whole or substantially the whole of which was religious in nature. The AO also referred to Section 80G(5) which provided that, the eligible institution or trust cannot be for the benefit of any particular religious community or caste or exist for any purpose other than charitable purposes. The AO thus observed that, as the appellant was a charitable organization registered u/s 80G having no religious purpose, it was not entitled to avail the benefit of exclusion set out in Section 115BBC(2)(b). The AO thus sought to tax the anonymous donations u/s 115BBC.

The appellant submitted that, it was both a religious as well as charitable trust and therefore fell within the exception set out in Section 115BBC(2)(b). For this, the appellant relied upon the registration granted u/s 10(23C)(v) by the ld. CCIT, Mumbai which was valid till date. The appellant also referred to its objects set out in the Trust Deed and pointed out that there were several places of worship within its premises, which evidenced that the appellant was a mixed purpose trust i.e. both charitable and religious purpose. As far the certificate held u/s 80G was concerned, the appellant explained that the term 'charitable purpose', as defined in Explanation 3, excluded only those entities whose purpose wholly or substantially the whole of which, was religious in nature. The appellant claimed that the entities having mixed charitable and religious purposes were not excluded. The appellant also explained that, where any trust or institution existed both for charitable and religious purposes and the expenditure for religious purpose was less than 5% of the total income then, such trust or institution was eligible to obtain certificate u/s 80G. The appellant further furnished the details of the expenses incurred

for religious purposes incurred during the year, which comprised of 0.49% of the total income. The appellant thus contended that this material fact showed that it did not exist wholly or substantially for religious purposes and that the appellant was in compliance with the conditions set out in Section 80G(5B). According to appellant therefore, its holding of certificate u/s 80G was valid and at the same time since it was existing both for charitable and religious purposes, it was also entitled to avail benefit of exclusion set out in Section 115BBC(2)(b).

The AO however did not agree with the submissions put forth by the appellant. The AO emphasized that a trust can be registered u/s 80G of the Act only if it is purely charitable in nature and that even after insertion of Section 80G(5B), the provisions of applies only to a charitable organization, though some expenditure incurred on religious activities has been allowed. The AO observed that the exclusion set out in Section 115BBC(2)(b) was meant for the trusts established for both religious and charitable purposes which would suggest that at least one of the objectives of the trust was wholly or substantially religious in nature. The AO accordingly concluded that, the nature and constitution of the appellant trust was of a charitable organization and therefore the benefit of exclusion set out in Section 115BBC(2)(b) was not available to the appellant. With these findings, the AO taxed anonymous donations to the extent of INR 147.72 crores u/s 115BBC(1). Aggrieved by this action of the AO, the appellant preferred an appeal before the ld. CIT(A).

The Ld. CIT(A) observed that the main object of the appellant trust had always been to carry out the activities associated with prayers, maintenance of temple and providing facilities to the devotees who come for darshan including food and propagation of the teachings of Shri Sai Baba. The ld. CIT(A) thus held that charitable and religious purposes overlap and cannot be considered to be mutually exclusive, as wrongly suggested by the AO and relied upon the decision rendered by the Hon'ble Bombay HC in the case of DIT vs Bombay Pinjrapole Trust (59 taxmann.com 364) in which even maintaining and running gaushalas was also considered to be both charitable and religious purpose. Having regard to the objects and activities of the appellant Trust, the ld. CIT(A) held that the appellant was also existing both for charitable as well as religious purpose. The ld. CIT(A) accordingly held that, the 80G registration of the appellant had no relevance to ascertain the taxability of anonymous donations received by the appellant. For the aforementioned reasons, the ld. CIT(A) held that since the appellant Trust was existing both for charitable and religious purposes, it was entitled to claim benefit of Section 115BBC(2)(b) and accordingly deleted the impugned addition made by the AO. Aggrieved by the order of ld. CIT(A), the Revenue is in appeal before ITAT.

Ruling

The ld. Sr. Counsel accordingly prayed that, since the delay in filing the Form No. 10 has now been condoned by the competent authority, the AO may be directed to allow the benefit of exemption in relation to the accumulation of income u/s 11(2). The ld. CIT DR appearing for the Revenue did not dispute the same. Considering the foregoing factual position, the AO was directed to re-compute the total income of the appellant and allow the admissible exemption u/s 11(2) as claimed by the appellant in the return of income, since the delay in filing of Form 10 has since been condoned by the ld. CIT(Exemptions). Ground Nos. 1 & 2 of the appellant's appeal therefore stands allowed.

Having heard both the parties, the limited issue to be answered is whether 15% accumulation u/s 11(1)(a) has to be calculated on gross receipt or net receipt after deduction of revenue expenditure. ITAT find that this issue is no longer res integra in light of the decision of the Special Bench of this Tribunal in the case of Bai SonabaiHirji Agency Trust Vs. ITO (93 ITD 70). ITAT also stated that it is clear from the above that deduction of 25% was held to be allowable not on total income as computed under the IT Act. Any amount or expenditure, which was application of income, is not to be considered for determining 25% to be accumulated. ITAT hold that the accumulation u/s 11(1)(a) should be allowed in the manner as claimed by the appellant and the AO is directed to do so. Ground No. 3 of the appellant's appeal is accordingly allowed.

Ground No. 4 relates to the Ld. CIT(A)'s action of confirming the order of the AO denying the benefit of exemption u/s 11(1)(d) in relation to the interest earned on corpus funds. Ground No. 5 raised by the appellant, is noted to be without prejudice to Ground No. 4, wherein the appellant has claimed that the AO be directed to allow deduction for the expenses incurred out of the interest earned from such corpus funds. The facts involved in the present case are found to be distinguishable. Before ITAT also, the appellant has not been able to adduce any evidence or letter or directions from the corpus donors that the interest derived from investment of the corpus funds would also be towards the corpus of the appellant. ITAT thus hold that the ld. CIT(A) had rightly denied the exemption claimed by the appellant u/s 11(1)(d) in relation to the interest income of INR 25.51 crores derived from investment of corpus funds. In the present case the proximate source of the amount is interest earned on fixed deposit and not any voluntary donation. And there has not been any instruction whatsoever, by the original donor of the corpus funds that this amount has to be used for corpus of the appellant trust only. Therefore, in absence of any of the characteristics mandatory for exemption u/s 11(1)(d) the amount of interest earned on the corpus fund shall not be eligible for the above-mentioned exemption.

ITAT find that the lower authorities overlooked the same while seeking to tax the gross interest income from corpus funds. At the same time however, it is noted that even the appellant failed to bring the details of the amounts spent out of these funds to the attention of the lower authorities. According to ld. Tribunal, the amount spent out of such interest income from corpus funds which are towards the objects of the Trust has to be allowed by way of application of income, while computing the assessable income of the appellant Trust. In the fitness of the matters therefore, ITAT set aside this issue back to the file of the AO with the direction to examine the details of the amount spent out of the interest from corpus funds and allow the deduction in relation thereto and in accordance to law. Ground No. 5 was therefore allowed for statistical purposes.

Source: ITAT, Mumbai in DCIT vs Shree Sai Baba Sansthan Trust (Shridi) vide ITA No. 3049/Mum/2022, ITA No. 3210/Mum/2022 and ITA No. 3209/Mum/2022 on October 25, 2023

Reassessment of Cricket South Africa void; Revenue initiated proceedings in 'cavalier manner'

Facts

The appellant is a non-resident corporate entity incorporated under the laws of South Africa and is a tax-resident of South Africa. Admittedly, for the AY under dispute, appellant did not file any return of income in India. As stated by the AO in the assessment order, as per AIR information available in AIMS module of ITBA, it was found that the appellant had entered into certain transactions resulting in generation of income in India. Whereas, appellant had not filed any return of income in India offering such income. Based on such information, the AO reopened the assessment u/s 147 after recording reasons. In response to notice, appellant filed its return of income and objected to the reopening of assessment u/s 147. The case of the appellant was, during the year, it had entered into an agreement with TAJ Television Ltd., another non-resident entity, in respect of certain rights pertaining to live transmission of certain matches played in South Africa as well as transmission of recorded programs. It was submitted by the appellant that the license fee received from TAJ Television Ltd. is not taxable in India as neither the appellant nor TAJ Television Ltd. are Indian residents. The AO, however, was not convinced with the submissions of the appellant. He was of the view that the license fee received of INR 53.40 crores from TAJ Television Ltd. is in the nature of royalty, hence, taxable in India. Accordingly, he brought the receipts to tax at the hands of the appellant.

Ruling

The facts on record clearly reveal that the AO has reopened the assessment u/s 147 on complete nonapplication of mind. Unfortunately, the higher authorities while granting approval u/s 151 have approached the issue in a mechanical manner without verifying the facts. The concept of approval u/s 151 by the higher authorities in the matter of reopening of assessment u/s 147 is only for the purposes of putting a safeguard against any arbitrary or highhanded exercise of power by the AO while reopening of assessment u/s 147. Therefore, the burden casts on the approving authority are onerous, as, based on the reasons recorded by the AO for reopening of assessment, approving authority has to find out whether a case for reopening of assessment is made out.

ITAT also stated that in the facts of the present appeal, undoubtedly, the reasons recorded by the AO certainly do not make out a case for reopening of assessment u/s 147. However, without examining the facts on record, both the Additional CIT and CIT have granted approval u/s 151. Granting approval u/s 151 is not an empty formality. Approval has to be granted with caution and proper application of mind to the facts and material on record to prevent miscarriage of justice, as, reopening of assessment involves reopening of an already concluded assessment. Therefore, it should not be used as a tool for harassment to the appellant. Unless there is concrete evidence and tangible material before the AO indicating escapement of income, powers u/s 147 should not be exercised. However, this is not the case in the present appeal. Not only the AO has acted in a cavalier manner while reopening of assessment u/s 147 but the approving authorities have also failed in discharging the duties cast upon them by the Statue while granting approval u/s 151.

ITAT also stated that as a matter of fact, DRP was set up under the statute as an alternative dispute resolution mechanism for speedy disposal/resolution of dispute between the appellant and the department in certain areas of taxation. The DRP is constituted by three very senior officers of the department in the rank of Principal CIT/CIT. Therefore, it is expected that when the panel decides the objections raised by the aggrieved appellant, they must decide the issues raised before them by considering both the facts and law. This is so because, after directions are issued by the DRP, appellant gets no further opportunity before the AO as the AO has to implement the directions of DRP in letter and spirit. Accordingly, the reopening of assessment in the present case was invalid and the assessment order was declared as void ab initio and quashed.

Source: ITAT, Delhi in Cricket South Africa (NPC) vs ACIT (International Taxation) vide ITA No. 604/Del/2023 on October 27, 2023

Section 115BBE inapplicable on income voluntarily surrendered

Facts

The appellant is a resident individual and a search and seizure operation u/s 132 was carried out on the appellant. In course of search and seizure operation, a loose paper was found from the wallet of the appellant, wherein, the amount of INR 30.20 crores was mentioned against the noting "com trade". When the seized document was confronted to the appellant, in a statement recorded u/s 132(4), appellant stated that the figures mentioned in the seized document represent profit from offline commodity trading. Accordingly, he surrendered the amount of INR 30.20 crores as income in AY 2017-18 and followed it up in the return of income filed for the AY under dispute and also paid the taxes thereon. In course of assessment proceedings, the AO observed that appellant has calculated his tax liability on the surrendered income of INR 30.20 crores by applying the normal rate. According to the AO, income surrendered by the appellant is in the nature of unexplained money in terms of section 69A. Though, he did not make any separate addition of the said amount in the assessment order, however, he treated it as income u/s 69A. However, he did not make any change to the tax rate applied by the appellant. Subsequently, the AO passed an order u/s 154, wherein, he applied the rate of tax as prescribed u/s 115BBE. Being aggrieved with the higher tax rate charged u/s 115BBE, appellant preferred an appeal before ld. CIT (A). Being convinced with various submissions of the appellant, CIT(A) held that the income subjected to tax at the rate prescribed u/s 115BBE cannot be treated as income of the nature provided u/s 69A. Hence, normal tax rate would be applicable to such income. Being aggrieved with the aforesaid decision of ld. CIT, the Revenue is in appeal before ITAT.

Ruling

ITAT held that as rightly observed by the ld. CIT(A), section 69A uses word "may", which implies that if explanation offered by the appellant regarding source of money, bullion, jewellery or other valuable articles is satisfactory, it cannot be treated as unexplained money u/s 69A. In the facts of the present appeal, there is nothing on record to suggest that appellant's explanation regarding the source of the income offered has either been doubted or disputed at the time of search and seizure operation or even during the assessment proceedings. Therefore, in ITAT's view, the income offered by the appellant cannot be treated as unexplained money u/s 69A. Therefore, as a natural corollary, section 115BBE would not be applicable. ITAT also stated that even, the AO has not made any separate addition u/s 69A. He has merely re-characterized the nature of income offered by the appellant. Thus, in our considered opinion, the provisions of sections 115BBE would not be applicable to the facts of the present appeal.

Source: ITAT, Delhi in DCIT vs Tapesh Tyagi vide ITA No. 1344/Del/2021 on October 27, 2023

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+91.135.2743283, +91.135.2747084

3rd Floor, MJ Tower, 55, Rajpur Road, Dehradun - 248001

E: info@vkalra.com | W: vkalra.com

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